

**STANDING COMMITTEE ON LAW AND JUSTICE  
2018 REVIEW OF THE DUST DISEASE SCHEME  
2018 REVIEW OF THE LIFETIME CARE AND SUPPORT SCHEME**

**STATE INSURANCE REGULATORY AUTHORITY (SIRA)  
RESPONSES TO QUESTIONS TAKEN ON NOTICE 2 OCTOBER 2018**

**QUESTION 1**

*The Hon. LYNDA VOLTZ: I am sorry, before we go on to that, just explain to me why the market average filed premium is different to the average premium MAG Schedule 1 December 2017.*

*Ms DONNELLY: I can. Insurers have to file their intended premium with us and we undertake a compliance check. Then we let them know whether we have any objections or not. That will include a lot of detail for their price points for every kind of vehicle and person. It is quite a complex set of permutations. The other data you refer to, Ms Voltz, is, when they have successfully actually sold policies, what the average ends up being in the market. That has less risk of them being able to understand exactly what price point is being offered at every point in the market. I am happy to provide some more clarification on notice, knowing that this is a reason today basically. I am winging its, in a sense.*

**ANSWER:**

The average premium set out in Schedule 1E of the Motor Accident Guidelines sets out the target average premium for the whole industry. The market average filed premium is an average of the premiums filed by each insurer (which is based on the insurer's projected business mix over the next 12 months).

Insurers are not required to assume the same target average premium and may choose to price below or above this average and therefore the market average filed premium may be different to the average premium in Schedule 1E.

For example, during 2018 various insurers filed below the target average premium in Schedule 1E and as a result, the market average filed premium was below the target average premium in Schedule 1E.

**QUESTION 2**

*The Hon. LYNDA VOLTZ: The average premium you have there is a market weighted premium, the 2017 figure — the MAG Schedule 1 of 1 December 2017. Is that right?*

*Ms DONNELLY: On page?*

*The Hon. LYNDA VOLTZ: Page iii.*

*Ms DONNELLY: I am not quite sure exactly what page you are looking at. I am happy to take that on notice.*

*The Hon. LYNDA VOLTZ: That is all right. Take it on notice and have a look. Sorry. I just needed to ask that question.*

*The Hon. TREVOR KHAN: No, it is important.*

*The CHAIR: No, it was absolutely important to clarify that.*

**ANSWER:**

Yes, the target average premium shown on Schedule 1E of the Motor Accident Guidelines is a weighted average premium of the whole market.

**QUESTION 3**

*The Hon. TREVOR KHAN: Dr Casey, Mr Shoebridge talked in terms of regulation, do you know in New South Wales whether it can be done by regulation or whether it requires legislation?*

*Dr CASEY: I would have to take that on notice. There are privacy considerations and there are other things that we need to consider.*

*The Hon. TREVOR KHAN: I have no doubt there are privacy considerations but the question is: Is there a legislative basis for it now or is there not?*

*Dr CASEY: I would have to take that on notice.*

*The Hon. TREVOR KHAN: Can you take that on notice?*

*Dr CASEY: Yes.*

**ANSWER:**

Consultation undertaken by the State Insurance Regulatory Authority to date has identified that notification into a dust diseases register should be at the level of the clinician and that mandatory reporting is required to ensure the register can be relied upon and maintains its utility.

The Public Health Act 2010 mandates notification of certain medical conditions from medical practitioners to public health authorities in NSW. Currently most dust diseases, including silicosis, are not included as medical conditions notifiable to health authorities. Those schedules of conditions requiring mandatory notification may be amended by Order of the Minister for Health.

Further, Part 6 of the Public Health Act 2010 provides for the establishment and maintenance of a public health or diseases register, by Order of the Minister for Health, "to facilitate the identification and monitoring of exposure to chemicals or other environmental factors that impact, or may impact, adversely on the health of individuals". For example, the NSW Cancer Registry appears to be established under this provision.

It will depend on the form of the proposed mandatory notification regime or register as to whether it would be capable of being established by Ministerial Order, or whether an Act would be required to establish the regime/register. Also, in developing a register there may need to be consideration of overlap with other regulatory regimes.

Whether to seek to establish a register for dust diseases by Ministerial Order would be a matter that would need to be raised with NSW Health. If the Minister for Health decided to proceed with such a proposal, Parliamentary Counsel would be best placed to provide advice about the appropriate legal mechanism.

#### QUESTION 4

*Mr DAVID SHOEBRIDGE: Could you let us know on notice what the content of the Queensland example is and whether or not that is a good model to start with?*

*Ms DONNELLY: We can give you some views on that.*

#### ANSWER:

The proposed Queensland model seeks to establish a compulsory notification regime for occupational dust lung disease – i.e. the Notifiable Dust Lung Disease register. Part 7 of the Health and Other Legislation Amendment Bill 2018 (the Bill), introduced in Parliament on 13 November 2018, proposes to amend the Public Health Act 2005 to establish a framework for notification of particular occupational dust lung diseases, including coal mine dust lung diseases.

This amendment, if passed, will give effect to recommendations 59 and 60 of the Coal Workers' Pneumoconiosis Select Committee of the Queensland Parliament in its Black lung white lies report of 2017 by establishing a compulsory notification regime for occupational dust lung disease to Queensland Health.

The Bill requires particular medical practitioners to notify of a diagnosis of these diseases to the Chief Health Officer who is required to establish and keep a register of the notifications about notifiable dust lung diseases.

The purposes of establishing and keeping the register are to monitor and analyse the incidence of notifiable dust lung diseases and enable information about notifiable dust lung diseases to be exchanged with an entity of the State.

The Bill requires the Chief Health Officer to provide annual reports to the Minister for Health which are to be tabled in Parliament, enabling a Parliamentary committee to inquire into the report.

To ensure diagnosed cases are not overlooked, it is understood the Bill would enable the Queensland Chief Health Officer to request information about any diagnosed cases provided directly to relevant agencies, including Queensland WorkCover and the Queensland Department of Natural Resources, Mines and Energy. The Queensland model currently has instances of dust lung diseases that have already come to the attention of the Queensland Government through the Coal Mining Safety and Health Act 1999 and the Mining and Quarrying Safety and Health Act 1999.

The Queensland Bill also authorises medical practitioners to give information where they may otherwise be required to maintain confidentiality under an Act, oath, rule of law or practice without contravening them or being liable to disciplinary action for giving the information.

SIRA understands that the Bill would ensure that the register captures particular types of lung diseases such as silicosis and pneumoconiosis caused by any occupational exposure. This notification process for dust lung diseases would improve data collection and enable diagnosis information to be collated by Queensland Health, and would assist with monitoring the prevalence of these conditions.

This model would meet many of the requirements of a dust diseases register recommended by the Thoracic Society of Australia and New Zealand.

## QUESTION 5

Mr DAVID SHOEBRIDGE: Yes, well it may be cost more, but surely we should be getting parity in that workers compensation is \$15,000. Does SIRA have a view about whether or not there should be parity and the Dust Diseases benefit should be \$15,000 at least? Do you want to take that on notice?

Ms DONNELLY: I am happy to take that on notice, yes.

Mr PARKER: Can I add to that?

Mr DAVID SHOEBRIDGE: Yes.

Mr PARKER: There are two steps for us to do that. One is in the guidelines for the benefits.

Mr DAVID SHOEBRIDGE: Correct.

Mr PARKER: And the reference in the guidelines is to the dust diseases Act so that if we wanted to change it, once again the responsible Minister would be the Treasurer and the guideline would be something that just refers to those changes.

Ms DONNELLY: We will give you an answer on notice.

## ANSWER:

The *Workers Compensation (Dust Diseases) Act 1942* prescribes the amount payable for funeral expenses under section 8 (2A).

*(2A) The Authority is to pay from the Fund the reasonable expenses of a deceased person's funeral not exceeding the sum prescribed by or under section 27 of the Principal Act, but only if:*

*(a) the person had dependants and those dependants are entitled to an award under subsection (1), or*

*(b) the person had no dependants, but any dependants of the person (had they existed) would have been entitled to an award under subsection (1).*

Section 8 (2A) references the sum prescribed under section 27 of the Principal Act (*Workers Compensation Act 1987*).

*27 Death of worker leaving no dependants—funeral expenses (cf former s 8 (4))*

*If death results from an injury and the worker leaves no dependants, the compensation payable by the employer under this Act shall be the payment of reasonable funeral expenses not exceeding:*

*(a) \$9,000, or*

*(b) where some other amount has been prescribed by the regulations—that other amount.*

Section 27 was repealed from the Principal Act under the *Workers Compensation Legislation Amendment (Benefits) Act 2008*.

However, the original link between the two Acts does indicate an intention that there should be parity in the funeral benefits available under the *Workers Compensation (Dust Diseases) Act 1942* and the *Workers Compensation Act 1987*

Any change in the prescribed rate of \$9,000 can be achieved through an amending Regulation published by the NSW Government under section 27 as it applies to the *Workers Compensation (Dust Diseases) Act 1942*.

## QUESTION 6

*The Hon. DANIEL MOOKHEY: What is the rate of investment return that you are projecting?*

*Ms DONNELLY: We might need to take that on notice.*

## ANSWER:

The Liability Valuation report for the Dust Diseases Scheme produced for icare by independent actuaries PwC is based on an assumption of 4.5 per cent per annum (net) return on investment.

## QUESTION 7

*Mr DAVID SHOEBRIDGE: Yes, but their funding requirements will be very different if you said to them, "Do you know what? We want to reduce the levy. Therefore, you have to eat into your capital." I do not know if that is a decision that is made by you or a decision that is made by them. given it is meant to be a pay-as-you-go scheme.*

*Ms DONNELLY: We can take that question on notice. However, the use of the investment earnings to offset the levy has commenced since SIRA and icare were established and started to have that conversation.*

## ANSWER:

The levy is established under the Workers' Compensation (Dust Diseases) Act 1942 and currently operates on a "pay as you go" basis, however the legislation does not specifically require that it operate in this manner.

The Workers' Compensation (Dust Diseases) Act 1942 clarifies the role of SIRA and the Dust Diseases Authority in relation to the functioning of the Fund.

Section 6(4) requires the Dust Diseases Authority to make an annual estimate of the amount to be expended out of the Fund, while section 6(6) determines that the estimate will be funded by way of contributions provided by insurers. Section 6(7) further specifies SIRA's role in relation to apportionment of contribution to insurers.

A related aspect of determination of total funding requirements is the investment of the Fund. Section 6(2AA) indicates the Dust Diseases Authority (managed by icare) has the responsibility for the management of the Fund including capital management and investment.

Under section 23(a) of the State Insurance and Care Governance Act 2015, SIRA's principal objectives include promoting the efficiency and viability of insurance and compensation schemes established under Acts under which SIRA exercises functions. SIRA does consider the liability valuations for the scheme and would not hesitate to provide constructive input to icare on the icare fund management for the Dust Diseases Scheme.

SIRA notes the Committee interest in options to reduce the levy and will seek a briefing from icare on this matter.